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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,541

12/19/2005

Amir Barzilay

32887

9957

27887

7590

07/29/2009

FENNEMORE CRAIG

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SUITE 2600

PHOENIX, AZ 85012

EXAMINER

MAEWALL, SNIGDEHA

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

07/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/561,541

**Applicant(s)**

BARZILAY ET AL.

**Examiner**

Snigdha Maewall

**Art Unit**

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 88-99, 101 and 103-115 is/are pending in the application.
- 4a) Of the above claim(s) 88-99, 101, 103-105 and 108-115 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 106 and 107 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 01/03/07, 03/23/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Summary

1. Receipt of IDS filed on 01/03/07 and 03/23/09 is acknowledged.

### Restriction/Election

Applicant's election with traverse of Group III, claims 106-107 in the reply filed on 05/08/09 is acknowledged. The traversal is on the ground(s) that the common technical feature is not cited in the prior art. The reference only cites bioactive agent in food preparation and encapsulation of the bioactive agent. This is not found persuasive because the amended claims still are to bioactive agents though they are to heat sensitive agents but the prior art still teaches heating step and further the technical feature is the encapsulation and the prior art teaches the encapsulation of bioactive agents. Further more a method of improving the health status of a mammal is different invention from method of encapsulation of bioactive agent.

The requirement is still deemed proper and is therefore made FINAL.

Claims 100 and 102 are cancelled.

Claims 88-99, 101, 103-105 and 108- 115 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05/08/09.

Claims **106-107** are under consideration. Applicants are required to change the dependency of claims 106-107 since claim 101 on which claim 106 depends is drawn to non-elected group and therefore is not under consideration.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 106-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 6,482,517) and Mandralis et al. (US 6,048,562).

Anderson et al. teach a method of making a coated particle in liquid phases of active compound and the encapsulating material. The compound to be encapsulated in the method of Anderson includes a nucleic acid, a glycolipid, and a protein, see claims 22, 23, 26 and 39. The release of the encapsulated agent is accomplished via a change in pH, pressure or temperature, see claims 50, 80, 82 and 83.

Anderson et al. do not teach mixing the bioactive compound with the encapsulant material to form a blend or other components instantly claimed as bioactive compounds or encapsulant material.

However, Mandralis et al. teach an encapsulation process by mixing a core material with an aqueous medium comprising a natural food polymer as an encapsulant, see the abstract and claim 1. The encapsulation material of Mandralis et al. is a natural food polymer, such as whey protein and egg white, see column 2, lines 31-43 and claim 5.

One of ordinary skill in the art at the time the invention was made would have been motivated to have mixed the encapsulating and core components of Anderson et al. by mixing the ingredients, as taught by Mandralis et al. to avoid the denaturation and chemical cross-linking processes, see column 1, lines 42-52 of Mandralis et al.

Although neither reference explicitly teaches adding the encapsulated materials to a food, feed or drink, Anderson et al. teach that encapsulating vegetable fats in cattle feeds is a conventional practice in the art at the time the invention was made, see the discussion in the Background of the invention. In addition, one of ordinary skill in the art at the time the invention was made would have been motivated to have incorporated the encapsulated nutrients of Anderson et al. and Mandralis et al. to food, feed or drinks to stabilize the material and increase shelf-life, see column 1, lines 10-16 of Mandralis et al.

Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art the time the invention was made, absent unexpected results to the contrary.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Snigdha Maewall/

Examiner, Art Unit 1612

/Gollamudi S Kishore/

Primary Examiner, Art Unit 1612